

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

SEARS HOLDINGS CORPORATION, et al.,:

Case No. 18-23538

Debtors.

:
:

(Jointly Administered)

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ANTONIO D. ROBERTS,

Plaintiff,

v.

SEARS HOLDINGS CORPORATION, et al.,

Defendant.

MOTION FOR RELIEF FROM THE AUTOMATIC STAY

Movant, Antonio D. Roberts, a creditor herein, by his attorney, Luvell L. Glanton, Esq.,
who represent to this Court and alleges:

1. The Debtors filed a petition under Chapter 11 of the United States Bankruptcy
Code on October 15, 2018.

2. On July 20, 2018, Antonio D. Roberts was traveling on Jordan Ridge Drive in
Davidson County, Nashville, Tennessee when suddenly and without warning Michael Cochran, a
Sears Employee who while in the course and scope of his employment backed his vehicle out of
a car port and struck the front drivers side of Mr. Roberts vehicle. Mr. Cochran was cited for
failure to yield the right of way. Fault is not of issue. A true and accurate copy of
correspondence from the Debtors' liability insurance company regarding the claim is attached
hereto as **Exhibit A**.

3. The Debtors filing for bankruptcy relief has created an automatic stay preventing the Creditor, Antonio D. Roberts from filing a state court proceeding or from resuming settlement discussions with the Debtor's liability insurer.

4. In *In re Sonnax Indus., Inc.* 907 1280 (2d Cir Vt. 1990), the Second Circuit adopted twelve factors "to be weighed in deciding whether the litigation should be permitted to continue" in a forum other than the bankruptcy court. *Id.* at 1286. The twelve factors are: "(1) whether relief would result in partial or complete issue resolution; (2) lack of connection with or interference with bankruptcy case; (3) whether other proceeding involves debtor as fiduciary; (4) whether specialized tribunal with necessary expertise has been established to hear cause of action; (5) whether debtor's insurer has assumed full defense responsibility; (6) whether the action primarily involves third parties; (7) whether litigation in another forum would prejudice interests of other creditors; (8) whether judgment claim arising from other action is subject to equitable subordination; (9) whether movant's success in other proceeding would result in a judicial lien avoidable by debtor; (10) interests of judicial economy and expeditious and economical resolution of litigation; (11) whether parties are ready for trial in other proceeding; (12) impact of stay on parties and balance of harms."

5. Pursuant to the Debtor's bankruptcy filing and imposition of the automatic Stay, Plaintiff is requesting relief from the automatic stay, which is justified on the following *Sonnax* factors:

A. First, Plaintiff's claim is only seeking proceeds from the Defendant Sears Holding Corporation's insurance policies that cover its employees who act negligently during the course and scope of their employment. Plaintiff is willing to enter into a stipulation and/or agreement that he will only pursue the proceeds

on any applicable policy of insurance/self insured funds, without pursuing the Debtor's other assets;

- B. The impact of the continuation of the stay upon creditor, Antonio D. Roberts would be significant. Mr. Roberts sustained injuries and medical expenses as result of the collision that occurred on July 20, 2018. Without relief from the automatic stay Mr. Roberts is left without a remedy.
- C. When an insurer is liable for the debtor's torts, this liability is personal within the meaning of section 11 U.S.C. 524(a)(2) only to the extent necessary to sustain recovery against the insurer. The debtor in this case Sears and its property are not prejudiced by exposure to the liability claim because the debtor and its property are not subject to any risk and maintenance of the suit does not frustrate the policy of the bankruptcy code. That means that the tort victim cannot seek to go after anything that is considered estate property, but they are free to go after third party relief.
- D. Creditor, Antonio D. Roberts is seeking to pursue liability ONLY to the extent Debtor/Defendant Sears Holding Corporation's insurance would be financially responsible to pay the judgment. This is the only way the Antonio D. Robert can proceed in order to determine liability and seek any claims against the insurer, since under Tennessee law the Plaintiff cannot sue the insurer directly.

5. That the foregoing constitutes cause to terminate the automatic stay under Section 362(d) of the United States Bankruptcy Code.

WHEREFORE, it is respectfully requested that this Court grant Creditor's motion for relief from the stay as to Creditor, Antonio D. Roberts, and for such other and further relief as this Court deems just and proper.

Dated: February 28, 2019.

Respectfully submitted,

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